CALIFORNIA DEPARTMENT OF TRANSPORTATION

AMERICANS WITH DISABILITIES ACT COMPLIANCE REPORT FOR FISCAL YEAR 2011/12

October 2012

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REQUIREMENTS OF THE LEGISLATIVE ANALYST'S OFFICE "SUPPLEMENTAL REPORT OF THE 2010–11 BUDGET PACKAGE"

Item 2660–001–0042 of the "Supplemental Report of the 2010–11 Budget Package" compiled by the Legislative Analyst's Office requires the following:[1]

Americans With Disabilities Act (ADA) Compliance.[2] The California Department of Transportation (Caltrans) shall report annually for three years to the fiscal and policy committees of the Legislature and the Legislative Analyst's Office information about Caltrans' ADA compliance program and efforts related to the settlement of lawsuits regarding violations of the ADA. The first report shall be provided no later than 12 months after the final settlement has been approved by the presiding court. Two subsequent reports shall be provided annually thereafter. The reports shall provide the following:

1. **Overview of Caltrans' ADA Compliance Program.** An overview of Caltrans' ADA compliance program and how the program fulfills each of the requirements of the lawsuit settlement agreement.[3]

2. **Recent Changes to Caltrans' ADA Compliance Program.** A description of recent changes made to Caltrans' ADA compliance program that have been implemented as a result of requirements or recommendations from the ongoing implementation of the lawsuit settlement agreement.

3. **Total Resources Allocated.** The first report shall include the total level of resources Caltrans has allocated to its ADA compliance program for the preceding three fiscal years and the current year, including (a) staff resources, (b) contract resources, and (c) capital outlay or other funds. The two subsequent reports shall include the current-year estimated and past-year actual level of these resources. All three reports shall include the total level of resources Caltrans plans to allocate to the program in the budget year. Information should be broken down into major categories of work performed (such as program management, transition plan, complaints, and capital outlay). Approved and proposed budget changes should be referenced as applicable.

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[1]February 2011, p. 9, <http://www.lao.ca.gov/reports/2010/supp_report/supp_report_2010.pdf>, accessed October 3, 2012.

[2]The Americans With Disabilities Act (ADA) of 1990 (42 U.S.C. § 12101 et seq. and 47 U.S.C. § 225, Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended by the ADA Amendments Act of 2008, Pub. L. 110–325, September 25, 2008), <http://www.ada.gov/pubs/adastatute08.pdf>, accessed October 3, 2012. See also <http://www.ada.gov/pubs/ada.htm>.

[3]January 2010 *Californians for Disability Rights, Inc. v. California Department of Transportation,* Case No.: C 06 5125, Settlement Agreement Re Class Action Settlement, <http://www.dot.ca.gov/hq/bep/documents/Settlement_Agreement.pdf>, accessed October 3, 2012.

4. **ADA-Related Complaints.** The first report shall include the number of ADA complaints received and investigated during the preceding three fiscal years and the estimated number of complaints in the current year. The two subsequent reports shall include the current-year estimated and past-year actual numbers of complaints.

5. **Summary of Capital Outlay Projects.** A summary of the capital outlay projects that have been completed to address noncompliant facilities.

The final lawsuit settlement agreement was approved in June 2010 and therefore the first report covered fiscal year (FY) 2010/11. This second report covers FY2011/12. The third and final report will cover FY2012/13.

1. OVERVIEW OF CALTRANS' ADA COMPLIANCE PROGRAM

Caltrans owns and maintains as part of the State Highway System an estimated 4,000 miles of sidewalks along 15,000 miles of freeways and highways, approximately 12,500 bridge structures, 146 vista points, 87 safety roadside rest areas, and approximately 400 park-and-ride lots. In compliance with the ADA, Caltrans continues to improve its pedestrian infrastructure through highway construction, bridge replacement, safety roadside rest area rehabilitation, and park-and-ride lot reconstruction projects. However, prior to 2010, the number and locations of ADA-compliant improvements installed or modified as part of these projects were not systematically collected.

Following the ADA lawsuit settlement agreement in June 2010, Caltrans has made specific changes to comply with the terms of the agreement. These changes include, but are not limited to, the following:

1. Allocate $1.1 billion from the State Highway Operation and Protection Program in annual commitments over the compliance period of thirty years to improve access on sidewalks and other pedestrian facilities.

   Annual commitment levels are:

   - $25 million a year for FY2010/11 through FY2014/15
   - $35 million a year for FY2015/16 through FY2024/25
   - $40 million a year for FY2025/26 through FY2034/35
   - $45 million a year for FY2035/36 through FY2039/40

   Specific information related to delivery of FY2010/11 and programming and delivery of FY2011/12 ADA-compliant projects and program costs to fulfill the annual commitment are listed in table 1 on page 9.

2. Ensure that each new construction or rehabilitation project improves pedestrian facilities as part of that project. ADA-compliant work accomplished as part of these projects is Caltrans' responsibility under federal and State ADA laws and regulations and does not count toward fulfillment of the annual commitment.

Caltrans' Design Information Bulletin (DIB) Number 82–04 was revised in August 2010 where Capital Preventive Maintenance projects adjacent to pedestrian facilities (1) include installation or upgrade of curb ramps at the time the work is performed, and (2) ensure lanes and shoulders comply with accessibility requirements where vehicular lanes and shoulder are intended by Caltrans for pedestrian use.[4] New federal guidance by the United States Access Board is being finalized and should be adopted by the Federal Highway Administration by December 2014.[5] Changes will be made to DIB 82–04 as necessary to reflect the new federal guidance, including recent changes to the U.S. Department of Justice *2010 ADA Standards for Accessible Design* (2010 Standards).[6]

3. Develop and implement temporary routes through work zones guidance, ensuring that construction activities requiring temporary pedestrian routes are accessible by persons with disabilities, including training Caltrans personnel involved in designing and inspecting such work.

   In April 2011 Caltrans' Division of Construction developed guidance for Caltrans construction inspectors on how to provide safe, accessible, temporary routes through construction zones.[7] Mandatory training about temporary pedestrian routes through construction zones for Caltrans construction employees was implemented in December 2011. To date approximately 1,200 Caltrans employees have completed the training. Changes are also in process to strengthen contract specifications to ensure that contractors install and maintain accessible routes when a pedestrian facility is affected as part of a construction project.

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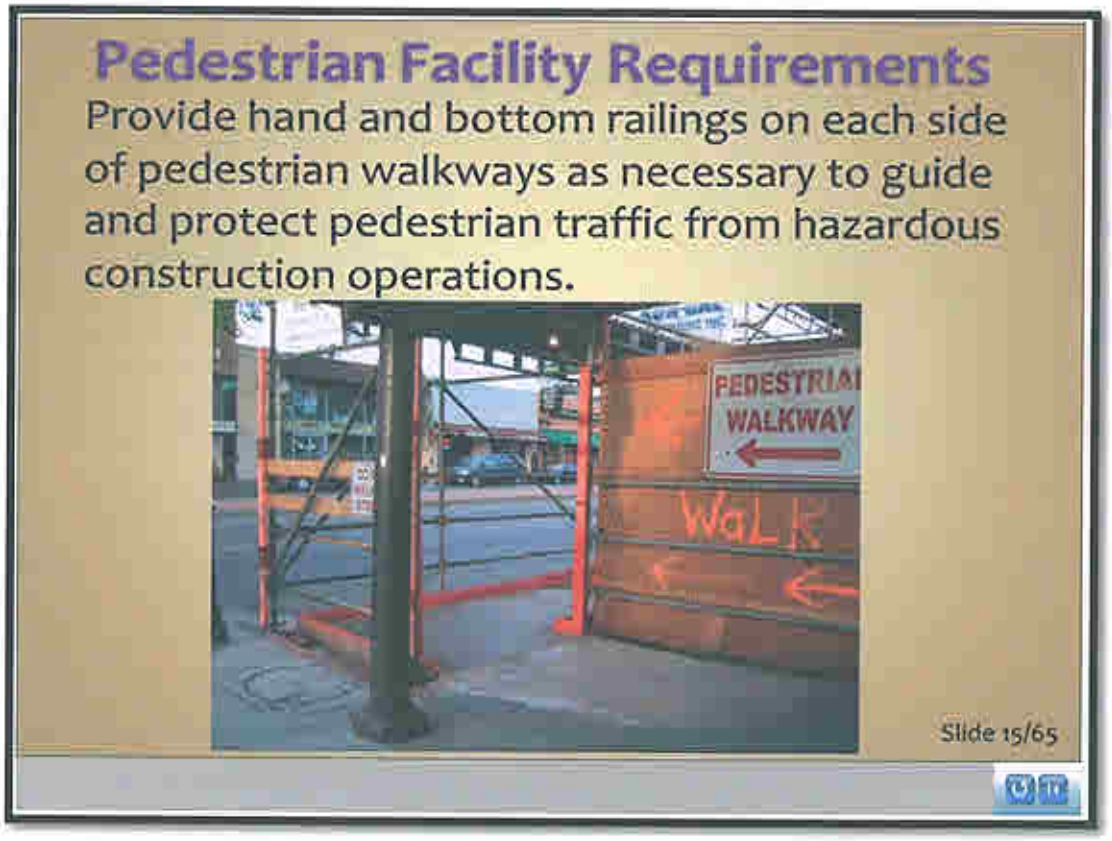
[4]Division of Design, Office of Geometric Design Standards, "Pedestrian Accessibility Guidelines for Highway Projects," August 18, 2010, section 4.1.3, p. 5, <http://www.dot.ca.gov/hq/oppd/dib/dib82-04.pdf>, accessed October 3, 2012.

[5]*Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way,* July 26, 2011, <http://access-board.gov/prowac/nprm.pdf>, accessed October 3, 2012. See also <http://access-board.gov /prowac/>.

[6]September 15, 2010, <http://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards_prt.pdf>, accessed October 3, 2012.

[7]*Temporary Pedestrian Facilities Handbook,* April 2011, <http://www.dot.ca.gov/hq/construc/safety /Temporary_Pedestrian_Facilities_Handbook.pdf>, accessed October 4, 2012.



Excerpt Presentation Slide From Caltrans' "Temporary Pedestrian Facilities Training" On-line Course

4. Accept access requests and grievances from persons with disabilities and others and respond within specific timeframes in accordance with U.S. Department of Justice regulations and terms of the lawsuit settlement agreement.

   In August 2011 Caltrans implemented a consultant contract with ADA Accrediting & Consulting to develop and provide a grievance and access request intake and tracking process to comply with federal law and the terms of the 2010 lawsuit settlement agreement. At the same time, the statewide ADA coordinator position, responsible for accessibility grievance and access request intake and investigations, was transferred from the Caltrans Office of Business and Economic Opportunity to the Caltrans ADA Infrastructure Program.

   The new grievance and access request intake process includes a Web-based intake form as well as accessibility through a toll-free phone number, a direct phone line to the statewide ADA coordinator, a teletype line, and e-mail communication directly to the ADA compliance in-box or the statewide ADA coordinator. The ADA intake form is available at <http://www.dot.ca.gov> via the ADA Access Request button and at <http://www.dot.ca.gov/contactus.htm>.

Caltrans Internet Home Page With ADA Access Request Button

5. Complete an annual report, at the end of the first full fiscal year and every year after, with sufficient detail to allow plaintiffs' attorneys to evaluate whether Caltrans is complying with the terms of the lawsuit settlement agreement.

   The annual report is due to the plaintiffs within 180 days of the end of each fiscal year; the first annual report was delivered to the plaintiffs in December 2011. A copy of that report is available at <http://www.dot.ca.gov/hq/bep/documents/FY2010-2011_Annual_Report.pdf>.

6. For the first seven years of the compliance period, retain an outside accessibility consultant with substantial experience in evaluating or assisting public entities in evaluating the accessibility of such programs, services, activities, and facilities regulated by title II of the ADA (42 U.S.C. § 12131 et seq.) and title 28 Code of Federal Regulations parts 35.150 and 35.151. The consultant shall review Caltrans' ADA-compliant access improvements and the annual report and provide an evaluation to the plaintiffs and members of the settlement class concerning Caltrans' compliance with the lawsuit settlement agreement.

   In April 2011 Caltrans retained an outside accessibility consultant, Sally Swanson Architects, Inc., to review Caltrans' ADA-compliant access improvements and the annual report and to provide an evaluation to the plaintiffs and members of the settlement class concerning Caltrans' compliance with the lawsuit settlement agreement. The first evaluation report by the consultant was completed and provided to the plaintiffs in March 2012.

2. RECENT CHANGES TO CALTRANS' ADA COMPLIANCE PROGRAM

Development of a New Transition Plan and Database. Title 28 Code of Federal Regulations parts 35.105 and 35.150(d) require each public entity to conduct a self-evaluation of services, polices, and practices to assess program compliance with ADA and related regulations and, in the event structural changes to existing facilities will be undertaken to achieve program accessibility, develop a transition plan setting forth the steps necessary to complete such changes. The transition plan must identify physical obstacles that limit accessibility, describe in detail the methods that will be used to make the facilities accessible, specify the schedule for taking the steps necessary to achieve accessibility compliance, and indicate the official responsible for implementation of the plan.

In 2009 Caltrans contracted the services of ADA Accrediting & Consulting to assess Caltrans' pedestrian infrastructure along the State Highway System and to develop an updated ADA compliance transition plan. The assessment of 4,000 miles of sidewalks and street crossings was completed in June 2011. More than 30,000 noncompliant locations were identified and included in Caltrans' ADA transition plan in a database form for public viewing and for use as a project development tool. The transition plan can be accessed at <http://www.adaac.org/secured/asset/caltran/TransitionReport.aspx?mode=public>.

Multiple ADA Transition Plan Locations Displayed in a Google Earth Format

Additional phases of the pedestrian infrastructure assessment are required to identify accessibility barriers on pedestrian tunnels and overcrossings, highway ramps, bridge structures, vista points, safety roadside rest areas, and park-and-ride lots. Funding from the State Highway Account to perform the additional assessments was approved and included in the State's budget for FY2012/13.

Development and Implementation of a Statewide ADA Training Course. In July 2012 Caltrans' ADA Infrastructure Program launched a statewide ADA training course to educate key district personnel involved in ADA-related projects about ADA history and laws, the 2010 lawsuit settlement agreement and requirements, federal and State guidelines, and Caltrans' grievance and access request process and ADA project database. This training has been presented to appropriate staff in all twelve Caltrans districts.

ADA Infrastructure Program Staff. Staffing of Caltrans' ADA Infrastructure Program continues to evolve as additional program components are identified and implemented.

In February 2010 Caltrans requested and was granted a two-year limited-term increase of three positions in State Highway Account funds to establish its ADA Infrastructure Program. These positions include the ADA Infrastructure Program manager (a CEA II), the ADA program advisor (a senior transportation engineer), and the statewide ADA coordinator (a staff services manager I). Since then, three on-loan positions also have been provided by other Caltrans divisions to support expanding requirements of the ADA Infrastructure Program. These positions include the supervising ADA program advisor (a supervising transportation engineer), another ADA program advisor (a senior transportation engineer), and an ADA program analyst (an associate governmental program analyst).

In addition to the statewide program staff, a district ADA engineer has been assigned in each of Caltrans' twelve districts to provide district input on ADA grievance and access request resolutions, initiate ADA improvement projects, update Caltrans' ADA transition plan, and provide technical guidance to project development teams and others. Funding for nine personnel years has been redirected temporarily from other traffic safety investigations to provide this service for the Caltrans ADA Infrastructure Program.

Development of a Disability Advisory Task Force. On March 30, 2011, a formal letter of invitation and intent was sent to community advocates for persons with disabilities asking for their individual participation and input in a new Disability Advisory Task Force for Caltrans. The first meeting of the task force was held in Sacramento on November 17, 2011.

This task force is to be an integral part of Caltrans, advising and assisting Caltrans' ADA Infrastructure Program with ADA-related issues. The task force is expected to meet four to six times during the next fiscal year with at least two face-to-face meetings in Sacramento. Task force duties will include providing input to the ADA Infrastructure Program on Caltrans' ADA policies, practices, procedures, project priorities, and methods of communicating with community advocates. The task force also will assist in developing the mission, charter, and membership of an external Disability Advisory Committee. Within the next fiscal year, the task force will be expanded from six to twelve members and become the official external Disability Advisory Committee to Caltrans' ADA Infrastructure Program.

Revised Grievance and Access Request Process. As the owner-operator of the State Highway System, including pedestrian infrastructure, Caltrans has a legal obligation to respond to complaints regarding accessibility barriers on the State Highway System brought to its attention by persons with disabilities and others. The complaints can be submitted in three ways: (1) a grievance by a person with a disability or that person's designee, (2) an access request by a person with a disability or that person's designee, or (3) a complaint by a person with a disability, that person's designee, or others specifying a location that is not accessible.

As part of the terms of the lawsuit settlement agreement, Caltrans has revised its procedures for responding to grievances and access requests. In addition to Caltrans staff, a contract with ADA Accrediting & Consulting for the ADA grievance process was implemented in August 2011. The contract includes development of an improved grievance initiation process and complaint-tracking database along with conducting field investigations of grievances and access requests. The Web-based accessibility grievance and access request process has been updated so it is easier to submit a grievance or access request concerning Caltrans' infrastructure.

This new grievance and access request process includes specific response and resolution timeframes in accordance with U.S. Department of Justice regulations and the terms of the lawsuit settlement agreement.

- Within 15 working days, Caltrans will respond through its consultant to receipt of a grievance or access request. The response will be in writing or in a manner appropriate for the particular disability.

- If the grievance or access request involves a facility not owned and controlled by Caltrans, Caltrans will facilitate notification of the grievance or access request to the appropriate entity as expeditiously as possible but in any event within 120 working days.

- Within 180 working days following the date Caltrans received the grievance or access request, Caltrans will provide a response to the grievant that explains Caltrans' position and offers a resolution to the grievance or access request. The response will include information about the right to appeal.

- Caltrans will proceed with implementation of its proposed resolution unless the grievant or requester files a written appeal of Caltrans' decision within 15 working days.

As part of Caltrans' stewardship responsibilities regulated by the Federal Highway Administration, Caltrans is required to ensure all grievances and access requests concerning State and local systems are resolved in accordance with federal guidelines and to the satisfaction of the grievant or requester.

3. TOTAL RESOURCES ALLOCATED

Caltrans reserved $25 million total resources for FY2011/12 and expended or allocated more than $14 million for ADA-compliant projects and program support (see table 1 on the following page). Additionally, Caltrans constructed 324 ADA-compliant curb ramps, more than 9 miles of sidewalks, and 278 accessible pedestrian signals, financed as part of regular roadway rehabilitation and new construction work.

In addition to the funding that goes into constructing ADA-related improvements, significant resources are required to manage Caltrans' ADA compliance program, develop guidelines and procedures, respond to grievances and complaints, and identify, scope, design, and inspect project installations. Along with the resources needed for positions specifically assigned to ADA investigations and projects statewide, resources are expended by noncapital

support divisions involved in Caltrans' ADA compliance effort, such as Human Resources, Budgets, Planning, and Maintenance, and are applied towards the annual commitment.

Table 1. RESOURCE ALLOCATIONS AND EXPENDITURES FOR ADA-COMPLIANT PROJECTS AND PROGRAM SUPPORT

Resource Unit	FY2010/11	FY2011/12
ADA Infrastructure Program Staff (Program Management)	$ 306,985	$ 659,647
Noncapital Support (Grievance/Complaint Investigations)	1,437,562	1,095,193
Capital Outlay	8,376,712	11,067,665*
Consultant Contracts (Transition Plan/Infrastructure Assessment)	4,706,000	0
Consultant Contract (Grievance Process and Procedure)	0	1,426,385
Access Consultant Contract	3,000	54,320
Total	$14,830,259	$14,303,210

*Includes $51,981 for ADA-compliant work done on CAPM projects that could be applied towards the annual commitment.

In September 2011 Caltrans submitted a Budget Change Proposal to the Department of Finance requesting continuation of three positions and $416,000 a year for two years, limited-term, from the State Highway Account to continue to develop and implement Caltrans' ADA Infrastructure Program. The Budget Change Proposal included a funds request of $4 million from the State Highway Account for two years for consultant contracts to conduct ADA field assessments of the State Highway System that are deficient and required to be included in Caltrans' ADA transition plan. Caltrans also requested a one-time increase of $1 million from the State Highway Account to continue to respond to grievances and access requests and to conduct ADA investigations, training, and transition plan updates, for a total of $5,416,000 in State Highway Account funds for FY2012/13. Caltrans also requested the flexibility to augment its consultant contract by an additional $2 million for ADA grievances, access requests, and investigations. The Budget Change Proposal was approved and included in the FY2012/13 State budget for the full amount of $5,416,000 in State Highway Account funds.

4. ADA-RELATED COMPLAINTS

The grievance procedure is a legal process established to comply with title 28 Code of Federal Regulations part 35.107(b) and title 49 Code of Federal Regulations part 27.13(b). The grievance procedure is intended and designed to provide prompt and equitable resolution of grievances alleging noncompliance with or any action prohibited by the ADA and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

Caltrans documents and investigates all grievances and access requests. Information from the investigations is used with engineering judgment and ADA-compliant design standards to develop appropriate resolutions for removal of access barrier issues.

Local System ADA Complaints. In addition to grievances and access requests concerning the State Highway System, Caltrans has been tasked by the Federal Highway Administration, as part of Caltrans' stewardship responsibilities, to oversee the resolution of ADA-related complaints concerning local transportation systems. Failure by a local agency to respond in a timely manner with a proposed resolution to a grievance or access request could result in loss of federal funding for that agency. The total number of complaints and investigations for the last two fiscal years are listed in table 2 below.

Table 2. ADA-RELATED GRIEVANCES AND ACCESS REQUESTS ON STATE AND LOCAL SYSTEMS

System	FY2010/11	FY2011/12
State System	68	169
Local System	27	51
Private	0	2
Total Processed	93	222

5. SUMMARY OF CAPITAL OUTLAY PROJECTS

ADA-compliant projects completing construction in FY2011/12 under the State Highway Operation and Protection Program are listed in table 3 below.

Table 3. ADA-COMPLIANT CAPITAL OUTLAY PROJECTS SUMMARY

Project	FY2010/11	FY2011/12
Number of ADA-Compliant Projects	6	7
Capital Outlay Costs*	$8,376,712	$11,015,684

*Includes capital construction and right-of-way estimates, utility relocation, environmental mitigation, and capital support costs including environmental review, preliminary engineering, surveys, right-of-way acquisition, project design, and construction inspection on ADA-only projects.

CONCLUSION

Caltrans' ADA Compliance Report for FY2011/12 is the second of the three annual reports required by the Legislative Analyst's Office "Supplemental Report of the 2010–11 Budget Package" and provides an overview of Caltrans' efforts to comply with requirements of the 2010 lawsuit settlement agreement and the ADA.

Caltrans continues to make its infrastructure increasingly accessible to persons with disabilities. While in the past two fiscal years Caltrans has not been able to meet or exceed the annual commitment amounts required by the lawsuit settlement agreement, projects are programmed for FY2013/14 and future years that will bring Caltrans' ADA Infrastructure Program into compliance with the lawsuit settlement agreement requirements and exceed the specified annual commitment amounts. The Web-based grievance and access request intake form and the investigation database will enable Caltrans to track the ADA-compliant work performed and develop a comprehensive transition plan. Caltrans continues to develop its ADA expertise with staff development and training that will ensure continued delivery of ADA-compliant projects in the future.